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Michael J. Mallie  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
12400 Wilshire Boulevard 7th Floor  
Los Angeles, California 90025

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**JUL 13 1995**

**OFFICE OF PETITIONS  
A/C PATENTS**

In re Application of	:
Ahmad Zandi, et al.	:
Serial No. 08/310,141	:
Filed: January 9, 1995	:
Attorney Docket No. 74451.P024	:
	: DECISION DISMISSING
	: PETITION

This is a decision on the petition filed January 9, 1995, requesting that the above-identified application be accorded a filing date of September 20, 1994.

On September 20, 1994, the application was deposited without an executed oath or declaration and without sufficient filing fees.

On November 2, 1994, Application Division mailed a Notice of Incomplete Application stating that page 43 of the specification was missing and that the filing date of the application would be the date of receipt of the missing page 43. Attached to the letter was a Notice to File Missing Parts of Application stating that applicant owes \$24.00 in payment of insufficient filing and additional claim fees and requiring an oath or declaration in compliance with 37 CFR 1.63 and the surcharge, if necessary.

In response, on January 9, 1995, inter alia, the present petition and a check for the \$130.00 petition fee were filed. Petitioners argue that page 43 of the specification was included with the application papers deposited on September 20, 1994. As evidence thereof, petitioners have submitted a copy of their postcard receipt and the declarations of counsel and the employee of counsel who signed the certificate of mailing and deposited the application as Express Mail in the U.S. Postal Service on September 20, 1994. The postcard receipt indicates 103 pages of specification were received on September 20, 1994, and the declarants each aver that each of the 103 pages of the application listed as being included in the application papers, including page 43, was contained in the application papers prior to sealing the Express Mail envelope. Petitioners request that the application be accorded a filing date of September 20, 1994.

A copy of page 43 was also submitted as a replacement for the original page 43.

A review of the file reveals that the application papers deposited on September 20, 1994, included a specification consisting of an unnumbered title page, pages 2-42 and 44-97, appendix pages A-1 through A-3, and pages 98-103 - a total of 105 pages of specification. Therefore, even without page 43, the filing included 103 pages of specification, as argued by petitioners and as indicated on the postcard receipt. Thus the number of pages of specification currently present in the Official file is not inconsistent with the number of specification pages indicated on the postcard receipt.

As set forth in MPEP 608.01, an application is considered incomplete, if it is filed without all pages of the specification. Clearly, page 43 was intended to be a part of the application. Since the application, as filed, included an unnumbered title page and pages 2-42 and 44-103, the application was prima facie incomplete in the absence of page 43. Thus, the present petition and petition fee were necessary in view of applicants' filing error.

At present, the petition must be dismissed. However, this decision is made without prejudice to reconsideration upon the filing of a request therefor. The application may be accorded a filing date of September 20, 1994, upon the filing of a request for reconsideration, accompanied by:

- 1) an amendment cancelling the incomplete sentences at the bottom of page 42 and the top of page 44 and renumbering pages 44-103 as pages 43-102, respectively;
- 2) a separate letter requesting cancellation of page 43 submitted January 9, 1995; and
- 3) a supplemental oath or declaration by the applicants stating that their invention is adequately disclosed in, and they wish to rely on, the application as thus amended, without page 43, for purposes of an original disclosure and filing date.

In the alternative, the application is entitled to a filing date of January 9, 1995, the date of deposit of page 43. However, the declaration submitted January 9, 1995, does not refer to page 43, since page 43 was not included with the application papers deposited on September 20, 1994. Accordingly, a supplemental oath or declaration by the applicants stating that page 43 filed on January 9, 1995, was a part of their invention when it was filed is required.

A request for reconsideration (no further petition fee is required) as outlined above or the supplemental oath or declaration referring to page 43 filed on January 9, 1995, must be filed within TWO MONTHS of the date of this decision in order to avoid abandonment. This time period may be extended pursuant to 37 CFR 1.136(a).

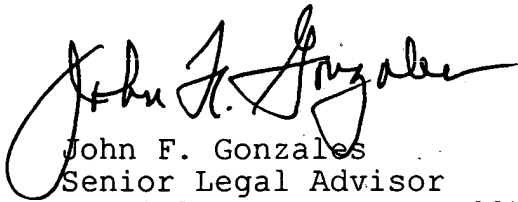
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Special Program Office

By hand: One Crystal Park, Suite 520  
2011 Crystal Drive  
Arlington, VA

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-9282.



John F. Gonzales  
Senior Legal Advisor  
Special Program Law Office  
Office of the Deputy Assistant Commissioner  
for Patents

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